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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In the Matter of)
)
Request for Amendment of) RM-
Sections 2.803-2.806 of the)
Commission's Rules Relating to)
the Marketing of Radio)
Frequency Devices)

PETITION FOR RULEMAKING

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SUMMARY

This petition seeks to harmonize Sections 2.803, 2.805, and 2.806 of the Commission's rules, which address the "marketing" of radio frequency devices. The Commission's marketing rules generally prohibit the marketing of radio frequency products prior to completion of the Commission's equipment authorization procedures. The rules also permit limited exceptions for such purposes as advertising and operating products at industry trade shows. These exceptions create an important avenue for the promotion and introduction of new products. As currently drafted, however, the marketing rule exceptions are applied inconsistently, which not only leads to industry confusion, but also unfairly excludes many consumer electronic products from opportunities to be promoted to potential customers.

The rule changes proposed in this petition would eliminate the anomalies and ambiguities in the current version of the Commission's marketing rules and would reduce unnecessary regulatory burdens. The proposed amendments take a comprehensive approach intended to achieve a simpler, more effective construction that reflects a fair balance between the benefits of introducing new consumer products and the need to ensure that the marketing of these products does not cause harmful interference with radio

communications. For these reasons, EIA/CEG requests that the Commission commence a rulemaking proceeding to amend Sections 2.803, 2.805, and 2.806 in the manner proposed in this petition.

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The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby requests that the Commission commence a rulemaking proceeding to amend Sections 2.803, 2.805, and 2.806 of the Commission's rules,¹ as proposed in Appendix A. The rule changes proposed in this petition are intended to harmonize the "marketing" rules for radio frequency devices. The changes would eliminate anomalies and ambiguities in the existing rules and reduce unnecessary regulatory burdens. The proposed rule changes would not increase the risk of harmful interference to authorized radio services.

1. 47 C.F.R. §§ 2.803, 2.805, 2.806 (1991).

I. INTRODUCTION AND INTEREST OF EIA/CEG

EIA/CEG represents the consumer electronics industry, an industry that provides the American public with televisions, radios, videocassette recorders and video-cameras, compact disc players, and a wide variety of other products. Our membership includes most of the world's major consumer electronics manufacturers, as well as many smaller companies that produce, import, distribute, sell, and service electronic products. Many of EIA/CEG's members' products fall within the Commission's regulations governing radio frequency devices, including the rules addressing the marketing of such devices.

The Commission's marketing rules generally prohibit the "marketing" of radio frequency products prior to completion of the Commission's equipment authorization procedures. The rules also permit limited exceptions for such purposes as advertising and operating products at industry trade shows. These exceptions create an important avenue for the promotion and introduction of new products. As currently drafted, however, the exceptions are applied inconsistently, which not only leads to industry confusion, but also unfairly excludes many consumer electronic products from opportunities to be promoted to potential customers. For these reasons, EIA seeks to revise Sections 2.803-2.806.

II. DISCUSSION

A. The Marketing Rules for Radio Frequency Devices Are Inconsistent, Confusing, and Unduly Restrictive.

At the outset, it may be helpful to provide some background regarding the regulation and authorization of radio frequency devices.

1. Equipment Authorization Rules and Procedures.

Part 15 of the Commission's rules establishes radio emission standards for "radio frequency devices" that are not required to be individually licensed.² These rules are intended to ensure that the operation of such devices does not cause harmful interference with radio communications. Part 2 of the Commission's rules establishes procedures for Commission approval of radio frequency devices and sets forth various requirements applicable to such equipment.³

A number of the Part 2 equipment authorization procedures require the filing of an application and an affirmative Commission approval. These procedures are known as "certification," "notification," "type approval," and

2. 47 C.F.R. Part 15 (1991).

3. Id. at Part 2, Subparts I, J, K, and L. This petition addresses only certain of those sections of the Commission's rules that govern the marketing of radio frequency devices (i.e., Sections 2.803-2.806).

"type acceptance."⁴ In contrast to these authorization procedures, the rules also provide for equipment "verification" procedures.⁵ Verification does not require an application or specific Commission action. Rather, the manufacturer or importer of equipment must ensure that each device complies with the appropriate emission standards. As discussed below, the type of authorization procedure to which a device is subject may dramatically affect the extent to which it may be marketed prior to equipment authorization.

2. Marketing Rules.

The Commission's marketing rules generally apply extensive restrictions on radio frequency devices prior to compliance with the Commission's equipment authorization procedures.⁶ As a general rule, no person may sell or lease, offer to sell or lease, advertise, import, ship, or distribute for the purpose of sale or lease any radio frequency device prior to compliance with the Commission's rules.⁷

4. Id. at §§ 2.903-2.907, 2.961-2.1045.

5. Id. at §§ 2.902, 2.951-2.957.

6. Id. at §§ 2.803, 2.805.

7. Id.

The rules also provide for certain exceptions. Section 2.803, for example, states that "the advertising or display of a device, which has not been granted type approval, type acceptance, certification, or notification," will be permitted so long as "such advertising contains, and the display is accompanied by, [a] conspicuous notice"8 The rule goes on to specify the precise language that must be used to alert the prospective buyer that the device has not been approved by the Commission and therefore may not be sold or offered for sale.9

By contrast, Section 2.805 specifically precludes such advertising or display prior to compliance for equipment that is subject to verification. Section 2.806, however, makes certain exceptions to the rule in 2.805, but only for "digital devices."10 First, for digital devices that are subject to verification, and that are in the "conceptual, developmental, design, or preproduction stage," the rules permit "announcement and offer for sale" of the product, so long as the prospective buyer is "advised in writing" at the time of the announcement or offer that such

8. Id. at § 2.803.

9. Id.

10. Digital devices, which were previously called computing devices, are addressed in Part 15 of the Rules. Id. at § 15.3(k).

equipment will comply with the appropriate Commission rules before delivery or distribution.¹¹ Second, Section 2.806(c) states that any digital device -- which includes equipment subject to both verification and certification¹² -- may be operated for the "purpose of demonstration at a trade show," so long as a "conspicuous notice" is displayed informing prospective purchasers that the device has not been tested for compliance.¹³

3. Marketing Rule Disparities.

The practices permitted by the marketing rules are notably inconsistent. Devices subject to certification, for example, under Section 2.803, are permitted to be "advertis-[ed] or display[ed]." Section 2.805 prohibits any such marketing opportunity.¹⁴ Section 2.806(a) permits parties

11. Id. at § 2.806(a).

12. Although most digital devices are subject to verification, Class B personal computers and peripherals are subject to certification. All other Class A and Class B digital devices are subject to verification. Id. at §§ 15.101(a). See also id. at 15.3(h), (i) (definitions of Class A and Class B digital devices).

13. Id. at § 2.806(c)(2). This section contains other exceptions, allowing the operation of digital devices for such purposes as compliance and product performance testing. Id. at §§ 2.806(c)(1), (3), (4). These exceptions are not provided for non-digital devices. But see id. at § 15.7(b) (special temporary authority).

14. In a recent interpretation of Section 2.805, the Commission has made progress toward harmonization among the rules. In response to an industry inquiry, the (Footnote 14 continued on next page)

to "announce[] and offer for sale," but this applies only to certain digital devices that are subject to verification. Section 2.806(c)(2) permits all digital devices to be operated "for the purpose of demonstration at a trade show" -- an opportunity denied to other devices.

Similarly, the type of notice that must be provided to prospective customers differs from section to section. Section 2.803 provides specific language that must accompany the permitted advertising or display. Section 2.806(a) provides only general guidance regarding the message to be given to prospective buyers "in writing." Section 2.806(c)(2) creates yet another notice standard by requiring a display of "conspicuous notice that the device has not been tested for compliance."

These different standards and requirements are a result of incremental rule changes over the years. Insofar

(Footnote 14 continued from previous page)

Commission determined that products subject to verification should be permitted to be displayed or advertised prior to verification, even though Section 2.805 on its face would appear to prohibit such marketing practices. See Letter from Richard B. Engelman, Chief, Technical Standards Branch, Office of Engineering and Technology, FCC, to John M. Bianchi, Senior Engineer, Compliance Engineering, Toshiba America Consumer Products, Inc. (Jan. 8, 1992). Although this interpretation is beneficial, it is preferable to amend the rules so that they accurately reflect the full flexibility intended by the Commission.

as EIA/CEG is aware, the disparities are due more to happenstance (that is, concerning the time at which a particular rule was adopted) than to deliberate differentiation by the Commission among various product types. This situation causes unnecessary confusion for the industry and, more importantly, precludes manufacturers and importers of consumer electronic products from enjoying the same flexibility available to manufacturers and importers of other products.

B. The Proposed Rule Changes Will Correct Anomalies and Simplify the Marketing Rules.

1. Purpose of the Proposed Rule Changes.

The rule changes proposed in this petition would eliminate the anomalies and ambiguities that exist in the current version of the Commission's marketing rules and would reduce unnecessary regulatory burdens. The proposed amendments take a comprehensive approach intended to achieve a simpler, more effective construction that reflects a fair balance between the benefits of introducing new consumer products and the need to ensure that the marketing of these products does not cause harmful interference with radio communications.

The changes would provide the opportunity for the industry to present prototypes of innovative equipment to retailers, distributors, and consumers to exchange ideas, to

discuss product improvements, and to facilitate the efficient development of more marketable products. Such efforts can establish market acceptability of new equipment designs and allow significant product exposure for those entities that do not have national sales organizations. EIA/CEG believes that its proposed amendments to the Commission's marketing rules therefore would benefit both consumers and those entities involved in developing and marketing consumer products without risking increased radio interference.

The Commission has recognized the importance of facilitating the introduction of new and innovative products to retailers and distributors at industry trade shows prior to Commission authorization. In previous proceedings, the Commission responded to EIA/CEG's and other industry requests to create exceptions to the general prohibition of marketing prior to equipment approval. In doing so, the Commission agreed that it is in the public interest to allow advertising and other marketing at trade shows prior to Commission authorization, subject to proper notice that products do not yet comply with the Commission's rules.¹⁵ The procedures employed by the Commission for this purpose have worked well, but the time has come to eliminate

15. See, e.g., Interpretation and Amendment of Part 2, Section 2.803 of the Commission's Rules Relating to the Marketing of Radiofrequency Devices, 58 FCC 2d 784, 786, 788 (1976).

remaining anomalies that are not needed to serve regulatory objectives.

By requesting a relaxation of the marketing rules, EIA/CEG seeks to ensure that the rules reflect the Commission's intended level of marketing flexibility. EIA/CEG does not advocate that anyone be allowed to distribute products that have not yet been properly authorized. Nor is EIA/CEG suggesting that the Commission relax its radio emission standards. EIA/CEG fully supports the Commission's primary interest in the minimization of radio frequency interference, and the proposed changes will not increase harmful interference with radio communications.

2. The Proposed Changes Will Result in a
More Simplified and Efficient Regulatory
Framework.

The proposed rule changes are intended to simplify the marketing rules consistent with the Commission's longstanding commitment to eliminating needless regulatory burdens. The current marketing rules in Part 2 developed on an incremental basis throughout a period when Part 15 reflected a more complex and device-specific regulatory scheme. The Commission has since completely redrawn Part 15 to make it more uniform and less device-specific.¹⁶ The

16. See generally Revision of Part 15 of the Rules
Regarding the Operation of Radio Frequency Devices
Without an Individual License, 4 FCC Rcd 3493 (1989)
(subsequent history omitted).

same can and should be done to the marketing rules in Part 2.

In addition, the amendments proposed in this petition are permissive, and do not impose new requirements on manufacturers or importers of radio frequency devices. EIA/CEG's proposal is therefore fully consistent with the spirit of the President's deregulatory initiatives, which the Commission has strongly endorsed.¹⁷ And, EIA/CEG's proposed amendments are consistent with the congressional mandate that the Commission "encourage the provision of new technologies and services to the public."¹⁸

3. Summary of Proposed Rule Changes.

In light of the considerations discussed above, EIA/CEG proposes to replace Sections 2.803-2.806 with a single new section.¹⁹ The proposals essentially apply the marketing restrictions and exceptions on a consistent basis to all types of radio frequency devices. Under the revised construction, no radio frequency devices could be delivered

17. See State of the Union Address by President George Bush, 102d Congress, Second Session 4-5 (Jan. 28, 1992); Report of the Federal Communications Commission Regarding the President's Regulatory Reform Program (Apr. 28, 1992).

18. 47 U.S.C. § 157(a) (1988).

19. Sections 2.807-2.815, which set forth the remaining marketing rules in Subpart I of Part 2, would remain unchanged.

until properly approved under the Commission's rules. But all radio frequency devices could be advertised, displayed, announced, and offered for sale or lease prior to Commission approval (i.e., for those devices subject to certification, notification, type approval, or type acceptance) or determination of compliance with the Commission's rules (i.e., for those devices subject to verification). Such activities could take place only if accompanied by specified language, which would be provided in the rule.

The rules also would allow all radio frequency devices to be operated for the purpose of demonstration at industry trade shows. Similarly, the revised rules would apply to all radio frequency devices a number of other exceptions that are currently limited to digital devices. The proposed rules would retain the current prohibitions against activating, operating, or marketing of equipment that could not be authorized or legally operated under the Commission's rules.

EIA believes that its proposed harmonization of the rules will inure to the public benefit. Even if the Commission believes that it is necessary to retain some differentiation among radio frequency devices for marketing purposes, the Commission still should initiate a rulemaking proceeding to revise the rules and eliminate any restrictions that are more burdensome than is warranted by a

regulatory objective.²⁰ In any event, EIA/CEG believes the Commission's goal should be to to eliminate disparities and unnecessary burdens in the marketing rules to the extent possible.

C. The Commission Should Expeditiously Consider EIA/CEG's Proposed Amendments.

EIA/CEG is aware of no public interest consideration warranting any delay in making these changes. By contrast, if adopted in the manner proposed in this petition, the rules will confer substantial benefits. Accordingly, EIA/CEG urges the Commission to place this petition on public notice at an early date, so that rulemaking can be commenced relatively soon. EIA/CEG will cooperate with the Commission and other interested parties to ensure that a record for decisionmaking can be compiled promptly.


20. For example, although EIA/CEG believes that the rule changes it is proposing should apply to devices that are subject to all forms of Commission authorization, it would not object if the Commission limited its actions to harmonizing the rules for equipment subject to verification, certification, and notification, see 47 C.F.R. § 15.101(a) (1991), but not equipment subject to type approval and type acceptance.

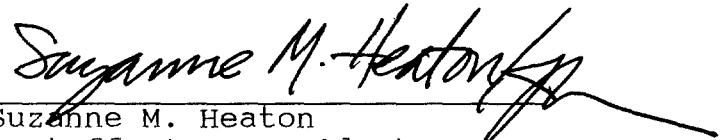
III. CONCLUSION

For the reasons stated, EIA/CEG respectfully proposes that the Commission amend its rules in the manner proposed above and in Appendix A and requests that a Notice of Proposed Rulemaking to this effect be published expeditiously.

Respectfully submitted,

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APPENDIX A

PROPOSED REVISED RULE

EIA proposes to consolidate the current Sections 2.803-2.806 of the rules into a single section, as follows:

§ 2.803 Marketing of Radio Frequency Devices Prior to Commission Approval or Compliance with the Rules.

(a) No person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device, unless, prior thereto:

- (1) Such devices subject to type approval, type acceptance, certification, or notification are approved by the Commission in accordance with the rules in this chapter; or
- (2) Such devices subject to verification comply with the applicable administrative and technical provisions specified in this chapter.

(b) Notwithstanding the provisions in subsection (a) of this section, a radio frequency device may be advertised, displayed, or announced and offered for sale or lease prior to Commission approval or compliance with the Commission's rules, provided that such devices are accompanied by a conspicuous notice worded as follows:

This device has not yet been approved by the Federal Communications Commission. This device must comply with appropriate FCC equipment authorization procedures before final delivery to the buyer or to centers of distribution.

(c) Notwithstanding the provisions of subsection (a) of this section, any radio frequency device may be operated prior to Commission approval or compliance with the Commission's rules under the following conditions:

- (1) Any radio frequency device may be operated for the purpose of demonstration at a trade show;
- (2) Any radio frequency device may be operated for the purpose of compliance testing;

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- (3) Any radio frequency device may be operated at the manufacturer's facilities during developmental, design, or preproduction stages for evaluation of product performance and determination of customer acceptability;
 - (4) Where customer acceptability of a radio frequency device cannot be determined at the manufacturer's facilities because of size or unique capability of the device, that device may be operated at the customer's site during developmental, design, or preproduction stages for evaluation of product performance and determination of customer acceptability;
 - (5) For the purpose of paragraphs (c)(3) and (c)(4) of this section, the manufacturer's facilities are considered to include the facilities of the party responsible for compliance with the regulations, the manufacturer, and other entities working under the authorization of the responsible party in connection with the development and manufacture, but not the marketing, of the equipment.
- (d) Parties responsible for verification of radio frequency devices shall have the option of ensuring compliance with the applicable technical specifications of this chapter at each customer's location after installation, provided that the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the responsibility of the party responsible for verification of the equipment.
- (e) Subsections (b)-(d) of this section do not apply to radio frequency devices that could not be granted an equipment authorization or be legally operated under the FCC's current rules.